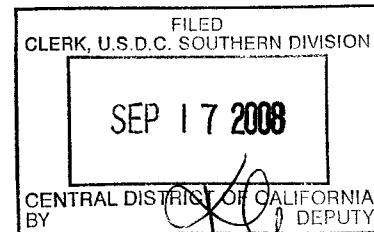


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARC PIERRE HALL,

Petitioner,

vs.

J. NORWOOD, Warden, et al.,

Respondents.

Case No. CV 08-5741-AG (RNB)

ORDER RE SUMMARY DISMISSAL
OF ACTION FOR LACK OF
JURISDICTION

Petitioner is a federal prisoner currently incarcerated at a federal prison in Adelanto, California, which is within the confines of this district. On December 5, 2007, he filed a Petition for Writ of Habeas Corpus by a Person in Federal Custody pursuant to 28 U.S.C. § 2241 in Central District of California Case No. CV 07-7906-AG (RNB). The Petition purported to be directed to a 1996 conviction sustained by petitioner in the United States District Court for the Western District of North Carolina. The gravamen of his claims was that, based on the Supreme Court's 2000 decision in Jones v. United States, 529 U.S. 848, 120 S. Ct. 1904, 146 L. Ed. 2d 902 (2000), his conviction and sentence for violating 18 U.S.C. § 844(i) were illegal. In Jones, 529 U.S. at 850-51, the Supreme Court held that an owner-occupied residence not used for any commercial purpose does not qualify as property "used in" commerce or commerce-affecting activity, and that arson of such a dwelling,

1 therefore, is not subject to federal prosecution under § 844(i). Petitioner was
2 contending that, as a result of the Supreme Court's statutory interpretation of § 844(i)
3 in Jones, he was "actually innocent" of a violation of that statute.

4 On January 3, 2008, Judgment was entered in Case No. CV 07-7906-AG
5 (RNB) summarily dismissing the action. The basis for dismissal was the Court's
6 conclusion that it lacked jurisdiction to consider petitioner's § 2241 petition. In
7 reaching this conclusion, the Court adopted the reasoning of the Magistrate Judge that
8 to the extent petitioner had been allowed to raise his Jones claim in connection with
9 his first § 2255 motion,¹ it could not be said that the § 2255 remedy was either
10 inadequate or ineffective to test the legality of petitioner's conviction under 18 U.S.C.
11 § 844(i). In other words, petitioner's Jones claim did not qualify for the "savings
12 clause" or "escape hatch" of § 2255. The Court also adopted the reasoning of the
13 Magistrate Judge that, to the extent petitioner was not allowed to raise his Jones claim
14 in connection with his first § 2255 motion, even if petitioner's Jones claim arguably
15 could be raised in a § 2241 petition (as other circuit courts had held), his petition
16 constituted a successive § 2241 petition barred by 28 U.S.C. § 2244(a).

17 On January 9, 2008, petitioner filed a timely Notice of Appeal from the
18

19 ¹ On February 17, 1999, petitioner had filed a motion to vacate, set aside
20 or correct his sentence pursuant to 28 U.S.C. § 2255 in the District Court for the
21 Western District of North Carolina. During the pendency of that motion, petitioner
22 did attempt to raise a jurisdictional challenge to his conviction and sentence for
23 violating 18 U.S.C. § 844(i), based on the Supreme Court's May 22, 2000 decision
24 in Jones. The Government's position was that Jones was not controlling because of
25 the commercial activity conducted at the residence in question. Petitioner failed to
26 address this contention in his reply. The District Court granted the Government's
27 motion for summary judgment and dismissed petitioner's § 2255 motion on October
28 10, 2001, concluding inter alia that petitioner's claim that there was an insufficient
nexus between interstate commerce and the residence involved in the firebombing
charge under 18 U.S.C. § 844(i) had been rejected on direct appeal and therefore
could not be relitigated in a § 2255 motion.

1 Judgment in Case No. CV 07-7906-AG (RNB). The Ninth Circuit subsequently
2 directed that the Court either issue or decline to issue a Certificate of Appealability
3 (“COA”). On April 11, 2008, the Court did issue an Order declining to issue a COA.
4 Thereafter, the Court issued an Order denying petitioner’s “Amended Notice of
5 Appeal for Certificate of Appealability Denial,” as well as an Order denying
6 petitioner’s “Motion to Stay or Recall Notice of Appeal to File Reconsideration
7 Motion for (COA).” Petitioner’s request for a COA currently is pending before the
8 Ninth Circuit.

9 Petitioner now has purported to file another Petition for Writ of Habeas Corpus
10 by a Person in Federal Custody pursuant to 28 U.S.C. § 2241. He claims that the
11 Court incorrectly dismissed his prior § 2241 petition in Case No. CV 07-7906-AG
12 (RNB) as being a successive petition barred by § 2244(a); and that, since his Jones
13 claim was never determined on the merits in his prior § 2255 and § 2241 applications,
14 his petition “may very well qualify as a ‘first petition’ under 2255.” In addition,
15 petitioner purports to be realleging some or all of the same substantive claims that he
16 alleged in Case No. CV 07-7906-AG (RNB).

17 The Court already has declined to issue a COA in Case No. CV 07-7906-AG
18 (RNB) based on its determination that petitioner failed to make the requisite showing
19 that “jurists of reason would find it debatable whether the district court was correct
20 in its procedural ruling” – i.e., that it lacked jurisdiction to entertain his § 2241
21 petition in Case No. CV 07-7906-AG (RNB). Unless and until the Ninth Circuit
22 overturns that procedural ruling, the Court will not reconsider it.

23 In accordance with the mandate of Hernandez v. Campbell, 204 F.3d 861, 865
24 (9th Cir. 2000), the Court now will turn to the issue of whether the newly-filed
25 Petition constitutes a § 2241 petition or a disguised successive § 2255 motion. That
26 issue turns on whether petitioner’s remedies under § 2255 were inadequate or
27 ineffective to test the legality of his detention. See Harrison v. Ollison, 519 F.3d 952,
28 956 (9th Cir. 2008), pet. for cert. filed (June 18, 2008); Loretsen v. Hood, 223 F.3d

1 950, 953 (9th Cir. 2000); Hernandez, 204 F.3d at 864-65. In the Court's view,
2 Harrison, which was decided subsequent to the entry of Judgment in Case No. CV 07-
3 7906-AG (RNB), is dispositive of whether petitioner's Jones claim qualifies for the
4 "savings clause" or "escape hatch" of § 2255. There, the petitioner was contesting
5 the legality of his sentence in light of Jones, which had been decided after his
6 judgment of conviction had become final in 1989 upon the dismissal of his direct
7 appeal for failure to prosecute. The petitioner's first § 2255 motion had been denied
8 on procedural grounds. Like petitioner here, the petitioner was contending that, under
9 the Supreme Court's interpretation of § 844(i) in Jones, the conduct for which he was
10 convicted no longer violated the statute and he therefore was actually innocent. The
11 petitioner further was contending that he did not have "an unobstructed procedural
12 shot" at presenting his Jones claim. See Harrison, 519 F.3d at 955-57. In rejecting
13 this argument, the district court had held that the petitioner's procedural shot had not
14 been obstructed because he could have raised the argument that the government failed
15 to prove the interstate commerce element of § 844(i) on direct appeal. The Ninth
16 Circuit agreed with the district court. It rejected the petitioner's contention that the
17 legal basis for his claim did not arise until Jones was decided in 2000; rather, it found
18 that Jones did not effect a material change in the applicable law since its statutory
19 construction did not materially vary from the Supreme Court's statutory construction
20 of the interstate commerce element of § 844(i) in Russell v. United States, 471 U.S.
21 858, 105 S. Ct. 2455, 85 L. Ed. 2d 829 (1985). Accordingly, the Ninth Circuit held
22 that the petitioner had not established that his petition was a legitimate § 2241
23 petition brought pursuant to the escape hatch of § 2255, but rather the petition had to
24 be characterized as a disguised § 2255 motion. It therefore affirmed the decision of
25 the district court dismissing the § 2241 petition for lack of jurisdiction. See Harrison,
26 519 F.3d at 959-62.

27 Here, as in Harrison, petitioner's judgment of conviction became final after the
28 Russell decision. Moreover, here, petitioner *did* argue on direct appeal that there was

1 an insufficient nexus between interstate commerce and the private residence he was
2 convicted of firebombing. See United States v. Hall, 1997 WL 712885, at *2 (4th
3 Cir. Nov. 17, 1997). Accordingly, under Harrison, the Court is compelled to
4 conclude that petitioner has not established that the Petition is a legitimate § 2241
5 petition brought pursuant to the escape hatch of § 2255. Rather, the Petition can only
6 be construed as a disguised successive § 2255 motion for which petitioner needed
7 authorization from the Fourth Circuit in order to proceed (see 28 U.S.C. § 2255(h))
8 and which could only be filed in the Western District of North Carolina (see
9 Hernandez, 204 F.3d at 864).

10 It therefore is ordered that this action is summarily dismissed for lack of
11 jurisdiction.

12 LET JUDGMENT BE ENTERED ACCORDINGLY.

13
14 DATED: SEPT 15, 2008

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16 
17 ANDREW J. GUILFORD
18 UNITED STATES DISTRICT JUDGE

19 Presented by:

20 
21 Robert M. Block
22 United States Magistrate Judge
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